IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 8713 OF 1998
With
SPECIAL CIVIL APPLICATION NO. 10242 OF 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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SHAMUBEN NARANBHAI - Petitioner(s)
Versus
STATE OF GUJARAT & ORS. - Respondent(s)

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Appearance :
Special Civil Application No.8713 of 1998
Shri P.V. Hathi for Petitioner(s).
Ms. Nisha Parikh, AGP for Respondent(s) : 1, 4.
Shri P.J. Vyas for Respondent(s) : 2.
Shri C.C. Bhalja for Respondent(s) : 3.
Special Civil Application No.10242 of 1998
Ms. Nisha Parikh, AGP for Respondent(s) : 1, 4.
Shri C.C. Bhalja for Respondent(s) : 2.
Shri P.V. Hathi for Respondent No.3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 25/04/2007

COMMON ORAL JUDGMENT

These two Writ Applications have been filed by Ujiben - widow of Naranbhai and her daughter, Shamuben daughter of Naranbhai, challenging the correctness, validity and propriety of the order dated 14th August, 1998 passed by the Additional Chief Secretary in Appeal No. SRD/HKP-Bhavan/11/97, setting aside the Collector's order dated 25th May, 1997 and the Deputy Collector's order dated 23rd February, 1994.

2. The parties submit that after the death of the original holder, Naranbhai Ukadbhai, the name of his widow- Ujiben, under revenue Entry No.385, was mutated. Yet another Entry No.387 was made on 30th October, 1968 on the alleged/forged application said to have been made by Ujiben for mutating the names of Devalben (sister of deceased Naranbhai) and Bai Shamuben (daughter of Ujiben and deceased Naranbhai). According to Ujiben, a notice under Section 135-D of the Bombay Land Revenue Code, 1879 (“the Code” for short) was not issued to her even before making Entry No.387.

3. Ujiben filed an appeal on 14th September, 1994 against making of the said entry; the said appeal was allowed on 23rd December, 1994 by the Deputy Collector after condoning the delay. He directed that Entry No.387 be deleted. The appeal filed by Devalben (sister in law of Ujiben) was dismissed by the Collector on 25th May, 1997 observing that the name of Ujiben was in the records since 1951-52, Entry No.387 was made and certified without following the procedure, as provided under Section 135-D of the Code, and that Devalben, sister of Ukadbhai, so also Shamuben, daughter of the deceased Naranbhai, would not succeed to

the properties of the deceased, who is said to have died somewhere in the year 1941-42. The said Devalben took up the matter in Revision Application No.11 of 1997. The Additional Chief Secretary, *vide* his order dated 14th August, 1998, allowed the Revision Application and set aside both the orders of the Collector and the Deputy Collector on the ground of jurisdiction, so also, on merits.

4. Shri Hathi, learned Counsel for the petitioner-Shamuben, submits that no appropriate opportunity was granted to the petitioner-Shamuben to represent her case because the notice was served upon her on 11th August, 1998 and the case was heard on 12th August, 1998. He submits that her case simply is that she never wanted her name to be mutated during the lifetime of Ujiben and if she was not interested, then, the Revisional Court could not direct restoration of the entry under which the name of the petitioner-Shamuben, daughter of Naranbhai, was mutated. It is also submitted by him that on 27th August, 1998, a telegram was sent and on 28th August, 1998, a detailed letter was sent to the concerned Revisional Authority asking for appropriate opportunity of hearing, but, *vide* letter dated 16th September, 1998, she was informed that the judgement was already delivered on 14th August, 1998.

5. Shri Hathi, learned Counsel for the petitioner, submits that the order had been passed on 14th August, 1998, but, upto 27th/28th August, 1998, the copy of the order passed by the Additional Chief Secretary was not served upon the petitioner. His further submission is that this has become the practice in the Revenue Court/Revenue Tribunals/Revenue Authorities not to give the date for the judgement and deliver the judgement on any other date and thereafter, not to send the copy of the judgement for months or years.

6. So far as this objection is concerned, I would certainly accept the submission of Shri Hathi that if orders are made on a particular date, then, within a short while, preferably within seven days to fifteen days, the copies of such orders should be sent by the concerned Officer/quasi judicial officers to the concerned parties, enabling them to know as to what was the final outcome of the matter and to decide the future course of action. If copies of the orders are not served to the concerned parties for a very long time, then, they would certainly be entitled to attribute motives. To avoid all heartburnings and attributions of motives, the Revenue Department must issue necessary instructions to all their Officers/Tribunals, including the Secretaries, who are hearing and deciding the revenue matters, that after the final orders are passed, an intimation should be sent to the party along with the certified copy of the said order within a short while.

7. On 11th August, 1998, undisputedly, the petitioner received the notice. Even on the very same date or 12th August, 1998 or immediately thereafter, the petitioner could send a telegram or a letter to the concerned Officer that the service of the notice did not leave sufficient time in favour of the petitioner to approach the Court, therefore, the matter be adjourned. Even otherwise the petitioner did not make any application before the said officer for setting aside the *ex parte* order. Shri Hathi, learned Counsel for the petitioner, submits that the Revenue Courts have no jurisdiction to review their orders, therefore, such an application could not be made. In the opinion of this Court, an application for review and an application for setting aside the *ex parte* order would stand on different footings. In case of review, there must be an error apparent on the face of the records compelling the concerned authority to review its earlier order, while in a case for setting aside the *ex parte* order, the party, who was proceeded *ex parte,* must make out a

sufficient cause for not appearing in the Court at the time of hearing and pray that the *ex parte* proceedings be set aside.

8. The copy of the application dated 28th August, 1998 does nowhere make prayer for setting aside the *ex parte* order. In a given case, the Revenue Authorities would also be entitled to exercise their jurisdiction in setting aside the *ex parte* orders if their judicial conscience is satisfied that it was almost impossible for the party to appear or there did exist sufficient cause for the non-appearance.

9. So far as the mutation of the name of Bai Shamuben is concerned, if she is not interested in mutation of her name, then, she can certainly make an application to the Talati-cum-Mantri, that her name be deleted and a fresh entry be made. Simply because she says that she is not interested and her name was fraudulently mutated, the rights of Devalben would not be adversely affected.

10. In relation to the arguments of Shri P. J. Vyas, learned Counsel for Ujiben, this Court must hold that the Revisional Authority had set aside the orders passed by the Deputy Collector and the Collector on the ground of jurisdiction also. The revenue entries in the present matter would not be decisive of the title, especially, when Devalben has already filed a civil suit seeking certain reliefs in her favour. Bai Ujiben and Bai Shamuben if are parties in the said suit, then, they would certainly be entitled to challenge the rights of Devalben to succeed to the property left by Naranbhai on all possible factual and legal grounds.

11. Shri Hathi and Shri Vyas, however, submit that taking advantage of that mutation entry, Devalben, who otherwise has no rights in the property, may create some charge over the property or may enter

into some agreement with third parties or may transfer her rights in the property and create further complications in the matter. In the opinion of this Court, when the civil suit has already been filed, then, all these questions can be raised by the present petitioners in the said civil suit. Even otherwise the petitioners are also free to file a civil suit against Bai Devalben, challenging her right, title or interest in the property and in either of the suits, they can claim interim injunction restraining Devalben from transferring the property or creating any charge or encumbrance on the same.

12. Taking into consideration the totality of the circumstances, I do not think that present are the matters where the Court should interfere. Both the Writ Applications are dismissed. However, the Court of the learned Civil Judge (S.D.), Bhavnagar, where Regular Civil Suit No.102 of 1994 is pending, shall dispose of the same within six months from the date of submission of copy of this judgement by either of the parties. Rule is discharged. Interim relief, if any, is vacated. No costs.

13. Let a copy of this order be sent to the Chief Secretary and the Secretary, Revenue Department, for its due compliance. The said Officers shall report compliance of this judgement to this Court within fifteen days from the date of receipt of copy of this order.

[R.S.Garg, J.]

*kamlesh**